

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DOMINIC (AKA DIAMOND) VARGAS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No.: 1:20-cv-00083-JLT-CDB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(Doc. 34)

Plaintiff Dominic Vargas is a state prisoner proceeding pro se and *in forma pauperis* in this action filed pursuant to 42 U.S.C. § 1983. On October 3, 2023, the magistrate judge issued Findings and Recommendations finding Plaintiff stated cognizable claims of medical indifference (Claim I) against Defendants Leslie Taylor, Robert Mitchell, Stephanie Neumann, Tristan Buzzini, and Shama Chaiken, and of due process violations (Claim II) against Defendant Jeff Macomber and recommended that all other claims and Defendants be dismissed from the action for failure to state a cognizable claim for relief and that Plaintiff's claim for injunctive and declaratory relief associated with Claim I be stricken. (Doc. 34.)

The Court served the Findings and Recommendations on Plaintiff and notified him that any objections were to be filed within 14 days after service and that the failure to file timely objections may result in a waiver of rights on appeal. (*Id.* at 3, citing *Wilkerson v. Wheeler*, 772

1 F.3d 834, 839 (9th Cir. 2014)). Plaintiff filed a third amended complaint that removed a
2 previously pleaded Defendant and a notice indicating he wished to proceed on the claims as
3 screened. (Doc. 33.)

4 According to 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court conducted a *de*
5 *novo* review of this case. Having carefully reviewed the entire file, the Court concludes the
6 Findings and Recommendations are supported by the record and by proper analysis. Accordingly,
7 the Court **ORDERS**:

- 8 1. The Findings and Recommendations issued on October 2, 2023 (Doc. 34) are
9 **ADOPTED** in full.
- 10 2. This action **SHALL** proceed on Plaintiff's third amended complaint (Doc. 33)
11 **only** as to Plaintiff's Eighth Amendment medical indifference claims (Claim I)
12 against Defendants Leslie Taylor, Robert Mitchell, Stephanie Neumann, Tristan
13 Buzzini, and Shama Chaiken, and on his Fourteenth Amendment due process
14 claim (Claim II) against Defendant Jeff Macomber.
- 15 3. All other claims and Defendants are **DISMISSED** from this action for failure to
16 state claims upon which relief may be granted.
- 17 4. Plaintiff's claim for injunctive relief in connection with Claim I and declaratory
18 judgment be **STRICKEN**.
- 19 5. This action is referred to the assigned magistrate judge for further proceedings.

20
21 IT IS SO ORDERED.

22 Dated: **November 20, 2023**


UNITED STATES DISTRICT JUDGE